

REMARKS

Reconsideration and withdrawal of the requirement for restriction are respectfully requested in view of the remarks herewith.

As this paper is being submitted within the one-month term for reply set by the September 16, 2002 Office Action, no fee is believed to be due. In the event, however, a fee is required for consideration of this paper, Applicants authorize the Assistant Commissioner to charge said fee, or credit any overpayment, to Deposit Account No. 50-0320.

The September 16, 2002 Office Action required an election under 35 U.S.C. § 121 from:

Group I Claims 1-11, drawn to an antimicrobial material,
classified in class 428, subclass 373+; and

Group II Claims 12-14, drawn to a method of making an
antimicrobial material, classified in class 28,
subclass 100.

In response to the Restriction Requirement, Applicants provisionally elect Group I, claims 1-11, for further prosecution in this application.

This election is made *with traverse* and is made without prejudice to Applicants' right to file divisional applications directed to the non-elected subject matter. It is respectfully requested that the restriction requirement be favorably reconsidered and withdrawn.

Applicants respectfully urge that the Restriction Requirement does not establish that searching all the inventions would constitute an undue burden to the Patent Office. Moreover, Applicants urge that the Restriction Requirement is contrary to public policy. Accordingly,

Applicants submit that the Restriction Requirement is improper and should be withdrawn or, at least, modified.

The MPEP lists two criteria for a proper restriction requirement. First, the invention must be independent or distinct. MPEP § 803. Second, searching the additional invention must constitute an undue burden on the examiner if restriction is not required. *Id.* The MPEP directs the examiner to search and examine an entire application “[i]f the search and examination of an entire application can be made without serious burden, ... even though it includes claims to distinct or independent inventions.” *Id.*

Applicants urge that the Restriction Requirement does not meet the second of these criteria as the search for all of the groups overlaps. For example, the claims of both Groups I and II relate to, *inter alia*, compositions comprising at least one agent which imparts odor-absorbing and/or odor-preventing and/or odor-reducing properties to the composition, and methods of manufacturing garments and materials made from such compositions. The present claims, therefore, represent a web of knowledge and continuity of effort that merits examination in a single application. Thus, reconsideration and modification of the Restriction Requirement are warranted.

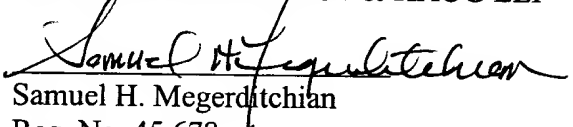
Further, it is respectfully urged that restricting the claims in the manner suggested in the Restriction Requirement constitutes an undue burden to Applicants as well as to the public. The cost of prosecuting and maintaining so many patents is unreasonable in view of the fact that the two groups are so closely related. Further, the public is inconvenienced as they will not know whether or not Applicants will file a divisional application to the remaining subject matter. Accordingly, the public will not know if they can practice the remaining invention without infringing future patent applications.

Accordingly, in view of the foregoing, reconsideration and withdrawal of the restriction and election of species requirements are requested, and an early action on the merits is earnestly solicited.

Respectfully submitted,

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